

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1946 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN V DHRANGI

Versus

PRINCIPAL-SHETH CN VIDYALAYA

Appearance:

MR MC SHAH for Petitioner

MR KIRIT I PATEL for Respondent No. 1

Ms ROHINI ACHARYA, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/11/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a lady belonging to a scheduled tribe, has prayed for a writ of mandamus directing the respondents, particularly respondent No. 1 herein, the principal of Sheth C.N. Vidyalaya at Ahmedabad to appoint the petitioner as a teacher in

physical training.

2. The school in question (hereinafter referred to as "the respondent school" or "respondent No. 1") is a secondary school registered under the Gujarat Secondary Education Act, 1972. Pursuant to the policy of reservation applicable to the respondent school, it had reserved one post for a lady scheduled tribe candidate. The first public notice inviting applications for the post from amongst scheduled tribe lady candidates with qualifications of B.A., D.P.Ed. was published in a widely circulated newspaper on 21.10.1987. In response to the said public notice, the school management received only one application i.e. from the present petitioner. The school management published another advertisement on 29.10.1997 in the same newspaper. In response to the said advertisement also, only one application was received i.e. from the present petitioner. The school management thereafter published the third advertisement in the same newspaper on 12.11.1987 mentioning that if scheduled tribe candidates were not available, with the permission of the District Education Officer, the post will be filled in from amongst other candidates. On this occasion also, the petitioner submitted her application. The school management also received a few more applications from ladies not belonging to any scheduled tribe. The Selection Committee constituted under the Act held interviews on 3.12.1987. The Committee, however, submitted a report that compared to other candidates the performance of the scheduled tribe candidate i.e. the present petitioner was very weak; hence, the Committee decided to issue another advertisement and to take interviews thereafter. Thereafter the petitioner filed this petition for the aforesaid reliefs in April, 1988.

3. By ad-interim order dated 20.4.1988 as confirmed by the interim order dated 27.4.1988, the school management was restrained from making any appointment to the post in question and it was directed that without permission of this Court no fresh appointment shall be given and no steps whatsoever for filling the post shall be taken by the respondent authorities.

4. In response to the notice, affidavit in reply is filed by the Principal of Sheth C.N. Vidyalaya.

5. At the hearing of the petition, Mr MC Shah, learned counsel for the petitioner has submitted that when the post was reserved for a scheduled tribe lady candidate and the petitioner had applied in response to the first as well as second advertisements, and the

petitioner was the only eligible scheduled tribe candidate who had applied, the respondent school management was duty bound to appoint the petitioner as an assistant teacher in physical training and that since the school management failed to do so, the petitioner is entitled to a writ of mandamus directing the school management to appoint the petitioner on the post in question.

6. On the other hand, Mr KI Patel, learned counsel for the respondent school management has submitted that since the petitioner was the only candidate who had applied in response to the first advertisement and also in response to the second advertisement, the school management was not duty bound to call upon the present petitioner for interview because as per the circular dated 20.2.1987 issued by the Gujarat Secondary Education Board, candidates at least 5 times the number of vacancy were required to be called for interview as per clause 9 in the schedule to the aforesaid circular.

It is further submitted that since the petitioner was the sole candidate having applied in response to the first as well as the second advertisement, the school management was justified in not calling the petitioner for interview. It is further submitted that, according to the reservation policy, on the third occasion when a suitable reserved category candidate is not available, it is open to the management to invite applications from general category candidates. Accordingly, the petitioner as well as candidates belonging to open merit category were also called for interviews on 3.12.1987, but the petitioner was not found to be fit for the post of assistant teacher in physical training and, therefore, the selection committee had suggested to invite fresh applications and hold interviews thereafter.

It is further submitted that in any view of the matter, the District Education Officer cancelled the no objection certificate earlier granted on 19.10.1987, pursuant to which the aforesaid advertisements were issued. Since the no objection certificate was thus cancelled by the District Education Officer on 23.3.1988, the cause of action would not survive for the petition as there is no question of making any attempt thereafter.

Lastly, it is submitted that in any view of the matter, now the District Education Officer has granted no objection certificate dated 3.5.2000 permitting the respondent school management to appoint an assistant teacher in physical training from out of the open

category candidates. It is also submitted that presently the Government policy is to require the school managements to absorb teachers rendered surplus in other schools and it was after complying with the said condition that the respondent school management has been granted this no objection certificate dated 3.5.2000. It is submitted that the no objection certificate is also conditional on the surplus teacher reporting for duty.

The learned counsel has also relied on the decision of the Apex Court in *Durga Devi vs. State of H.P.*, (1997) 4 SCC 575 in support of his contention that the Court hearing petitions under Article 226 of the Constitution would not interfere with the comparative merits and suitability of candidates and with the recruitment process.

7. The contention of the petitioner that she was wrongly denied the opportunity by not calling her for interview on the first and second occasions *prima facie* appears to have substance. The defence of the respondent school management is that in view of the circular dated 28.2.1987, at least five candidates were required to be called for interview for one vacancy and that subsequently by the Board Circular dated 15.10.1994, at least 3 candidates per one vacancy are required to be called for the interviews. It appears that the number of candidates required to be called for interviews is prescribed by the Government in the context of a large number of candidates applying for the post in question. It does not mean that if there is only one candidate applying for the post, such candidate cannot be called for interview. The respondent school could have called the sole candidate for interview. However, it appears that there was some doubt on this issue and, therefore, subsequently by Government Resolution dated 15.10.1994, it has been clarified that at least 3 candidates should be called for interview for one vacancy. If only one candidate applies in response to an advertisement for a reserved category, it is open to the school management either to call such candidate for interview and on finding that person fit for the post advertised to select such a person or to make more attempts for inviting applications from others. It appears that the respondent school management decided to go for the second alternative and when the second attempt also did not solicit any more applications other than from the present petitioner, the third attempt was made at which it was mentioned in the advertisement that in case of non-availability of a scheduled tribe candidate, other category candidates will also be considered.

It appears to the Court that, while the petitioner might have some justification for heart burning at not being called for interview on the first two occasions, it cannot be said that the reserved category candidate has a right to be appointed on the post reserved for such a category, because the management has the right to decide whether an eligible candidate is suitable for the post in question.

8. The dispute which now remains is whether the petitioner's case was considered on third occasion in accordance with law. The grievance of Mr MC Shah for the petitioner is that on the third occasion, the petitioner was found suitable at the interview, but her case was compared with the case of other open merit candidates and it was only in that context that the performance of the petitioner was found to be weak.

On other hand, it is submitted by Mr KI Patel for the respondent school management that the petitioner was not found suitable at the time of interview and that compared to the other open merit candidates, the petitioner's performance was very weak. It is submitted that if the respondent school management had any animosity against the petitioner, on the third occasion itself the respondent school management could have recommended the name of any open merit candidate as was mentioned in the third advertisement itself.

9. It is, however, not necessary to discuss this controversy in view of the cancellation of no objection certificate in February, 1988 which was earlier granted and pursuant to which the advertisements in question were issued. It also appears that the Government has evolved the policy for absorbing surplus teachers so as to see that the State exchequer is not burdened with payment of idle wages to teachers who are rendered surplus in schools which are closed down or where the numbers of classes are reduced.

10. Having heard the learned counsel for the parties and having considered the subsequent developments after the selection committee took the impugned decision dated 3.12.1987, this Court is of the view that it would be just and proper to dispose of this petition in terms of the following directions :-

I The Director of Education-respondent No. 2
herein looking after the secondary schools in the
State, shall examine all the relevant facts

including the strength of the teachers appointed in respondent No. 1 school and also the policy regarding absorption of surplus teachers and thereafter determine whether any teacher belonging to a scheduled tribe is required to be appointed in the subject of physical training.

II If respondent No. 1 comes to the conclusion that one post of assistant teacher in physical training is required to be reserved in the respondent school for scheduled tribe candidates-

- (i) the school management shall issue a fresh advertisement for such candidates.
- (ii) It will be open to the petitioner to apply in response to such advertisement and if the petitioner makes such an application, the respondent school management shall consider the case of the petitioner alongwith the other candidates belonging to the reserved category without disregarding the petitioner's case on the ground of any age limit.
- (iii) If the petitioner is found to be suitable for the post of assistant teacher in physical training and if no other teacher belonging to a scheduled tribe is available, the petitioner shall be appointed on the post in question.
- (iv) If, however, apart from the petitioner, other persons belonging to scheduled tribe also apply for the post in question, the school management acting through the selection committee constituted in accordance with law shall examine the comparative merits of the petitioner and other scheduled tribe candidates and thereafter make selection of the most suitable candidate from out of the scheduled tribe candidates.

III The Director of Education shall take the decision as per direction I after giving the school management and the petitioner herein and other affected parties an opportunity of being heard within one month from the date of receipt of the

writ of this Court or a certified copy of this order.

11. The petition is disposed of in terms of the aforesaid directions. Subject to the aforesaid directions, Rule is discharged. Interim relief granted earlier stands vacated.

(M.S. Shah, J.)

sundar/-